

REMARKS

Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

This amendment adds, changes and/or deletes claims in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, is presented, with an appropriate defined status identifier.

As noted, the examiner should be aware that the following patent and co-pending patent applications have the same ultimate assignee, and relate to similar subject matter, and some of these applications have received office actions:

10/880589 fld 7-1-04 (rejection received)

7,430,519 Issued 9-30-08

11/643769 fld 12-22-06

12/285121 fld 9-29-08

90/008,803 on Patent No. 6,675,151 (rejection received—Response filed—Notice of Intent to Issue Ex Parte Reexamination Certificate)

The examiner is invited to review these other co-pending applications as she deems appropriate.

Claims 123 and 132 were rejected in the May 29, 2009 office action as indefinite for containing the word “substantially.” This word has been removed in order to obviate the rejection. The word “substantially” modified the term “*immediate response*” in the phrase “*automatically assigning the new open position . . . in immediate response*” and in the phrase “*immediately removing the position as an available for selection open position.*” The use of the word “*immediate*” means that the system starts a transaction to fulfill the position on receipt of the acceptance and no other worker acceptance subsequently received can jump ahead or override this. Note that this does not require that the posting on the respective web pages immediately be removed. But it is no longer possible for another worker to accept the position. This would be clear to one of ordinary skill in the art.

A Declaration by Roland Thompson, one of the principles in the assignee for the subject application is attached. Mr. Thompson is the chief engineering designer for the Frontline Aesop substitute fulfillment system of assignee and has significant experience in the design of software control systems. Mr. Thompson states that one of ordinary skill in the information technology art would understand the use of the word "*immediate response*" in the above-recited claim element to mean that the system, comprising the one or more computers, starts a transaction to fulfill the position on receipt of the acceptance. The transaction may comprise, as one of ordinary skill would be aware, multiple different operations including one or more accesses to a database. No other worker acceptance subsequently received can jump ahead or override this transaction. Mr. Thompson further notes that this does not require that the posting on the respective web pages immediately be removed. But it does mean that it is no longer possible for another worker to accept the position. This is clear to one of ordinary skill in the art. This Declaration was not submitted earlier, as the section 112 rejection was first made in a final rejection.

The claims were rejected as obvious under 35 USC 103 over Clark et al. (US 5,164,897), in view of Rogers (HR Magazine, paragraph 16), and further in view of McGovern (US 5,978,768). This rejection is respectfully traversed and reconsideration is requested.

Claim 123 claims the computer logic operation of posting to a website associated only with a preferred worker of an offer to accept the posted position, which the preferred worker can accept by sending an electronic selection via an electronic appliance to thereby trigger an immediate assignment of the position. The system provides exclusive availability of this position to the one or more preferred workers for a specified period of time. If the worker sends an electronic acceptance of the position, then the system immediately assigns the position to the preferred worker that sent the electronic acceptance, without any further decision-making processes carried out by the system or manually by the administrator to weigh the attributes of the workers, e.g., no comparing of the resumes of workers that have sent in requests for the position can occur, for example. **If no electronic acceptance is received by the system within the specified time period**, then the open position is made available to other additional workers to allow them to trigger an assignment of the position. The claimed computer operation comprises a timed availability by computer of open positions in the context of preferred

workers, via the individual web pages of the preferred workers. See the claim limitations below:

"the one or more computers configured for notifying the one or more preferred workers that the new open position is now available for selection by at least posting information about the new open position to each of the respective one or more worker web pages associated only with the one or more respective preferred workers;

the one or more computers configured for automatically assigning the new open position only to one of the one or more preferred workers during a specified time period, in immediate response to receipt of an electronic selection of the new open position from one of the one or more preferred workers and immediately removing the position as an available for selection open position;

the one or more computers configured for automatically making available for selection the new open position to one or more additional respective worker web pages associated only with one or more additional respective workers that are qualified, if one of the one or more preferred workers has not selected the new open position before expiration of the specified time period.

The claims have been rejected under 35 USC 103 over Clark et al. (US 5,164,897) in view of two other references. Clark is directed to matching personnel to three sets of job criteria in three different data files. A first group of employees is obtained by matching job titles and a corresponding employee code. A second group of employees is obtained based on industrial experience. A third group of employees is obtained based on special skills. Then employee records for those employees in all three groups are selected. See the Abstract and Figs. 1a and 1b and the Summary of Invention for Clark.

This rejection, with its 3-way reference combination, indicates that the examiner is using applicant's claims as a blueprint to create the rejection. One of ordinary skill, with these references in front of him/her, would not be able to select elements to create or enable a system that is even close to applicant's claimed integral set of computer operations, without applicant's claims in front of him/her. And even with this 3-way reference combination, multiple claim elements continue to be missing.

With respect to Clark, it discloses or suggests nothing about:

web pages, much less a plurality of worker web pages, with each different respective worker web page associated with only the respective worker.

Clark discloses nothing about:

providing a system where receipt of an electronic acceptance from a worker automatically assigns the position to the accepting worker, immediately and without further decision-making processing.

Clark discloses nothing about:

a timed availability, by computer, of open positions to those respective web pages.

The examiner cites column 10, lines 34-40, column 15, lines 53-55, and column 7, 57-67 of Clark, for disclosing timed availability computer logic. To the contrary, the column 10 reference teaches to flag employee candidates who have not been contacted by the system within a pre-determined period of time for follow-up calls, i.e., presumably to determine if the candidate continues to be interested in employment opportunities. This has nothing to do with making a position available exclusively for a specified period of time.

The column 15, lines 53-55 reference in Clark is directed to obtaining a sample of the candidate market at a particular moment in time for planning a future project. See the full paragraph for this reference and Fig. 7. It has nothing to do with computer logic for making a position available exclusively for a specified period of time.

The column 7, lines 57-67 reference in Clark is a direct teach-away to the claimed computer logic. In that paragraph, which continues into column 8, Clark notes that his selection process is explained in the Operation of the Invention section. In this Operation section, it is explained that the “selection” refers to the selection of resumes to list in a report for the client company. See Fig. 6 and column 14, line 7 – column 15, line 31. The resumes in the report of Fig. 6 may then be reviewed by the company user. See column 14, lines 55-56. Alternately, an employee can perform a reverse match to compare employee qualifications to open positions to determine matches. Then a report is generated and a display provided to the employee. See column 17, lines 1-12 and Fig. 9.

This is a direct teaches away from the claim elements:

the one or more computers configured for **automatically assigning the new open position only** to one of the one or more preferred workers **during a specified time period, in immediate response to receipt** of an electronic selection of the new open position from one of the one or more preferred workers and immediately removing the position as an available for selection open position;

the one or more computers configured for **assigning the new open position, after the expiration of the specified time period**, to one of the qualified workers for which the new open position is made available for selection in immediate response to receipt of an electronic selection of the new open position from that qualified worker.

The second reference cited is Rogers, which discloses the use of “personal home pages” and states that “By using personal home pages, applicants can access statistics on how often their resume has been used in employer searches and set up a personal search agent that sends e-mails alerting applicants to new jobs that match their search criteria.” Rogers discloses nothing about **a system where receipt of an electronic acceptance from a worker automatically assigns the position to the accepting worker, immediately and without further decision-making processing. Likewise, Rogers discloses nothing about timed availability, by computer, of open positions for respective web pages.** Also, there is nothing in either Clark or Rogers to explain or suggest how one of ordinary skill would modify Clark to incorporate personal web pages to workers, and how this would be used in Clark. And claim elements continue to be missing, even with this unlikely combination.

The third reference cited, McGovern, discloses an employment recruiting service to directly receive and rate resumes (see Fig. 32), and is capable of monitoring employment advertisements and notifying a job seeker when a position for which the job seeker is qualified is available (see Fig. 24). See the Abstract.

The examiner argues that McGovern discloses automatically assigning the new position to one of the preferred workers and immediately removing the position as an available position, citing Fig. 6, column 8, lines 14-26, and column 10, line 66 – column 11, line 18. To the contrary, McGovern teaches away from the claimed invention. Fig. 6 is a tool bar for a company

administrator, not a job applicant. Column 8, lines 14-26 explains that the company administrator can manually add open positions and can manually delete positions using the tool bar. Column 10, line 66 – column 11, line 18 of McGovern again primarily discusses manual deletion, but adds the feature of automatic deletion of the position based on dates during which the position is to be active previously entered by the company hiring contact.

McGovern's website may include an email address of the company hiring contact, so that a job applicant can send an email with a resume to the company. See column 15, lines 55-58. But there is never an automatic assignment of a position to the job applicant by the company system. Rather, the company system facilitates the company manager rating the received resumes, so that the company hiring contact can then make the ultimate selection based on the resumes and the ratings. See column 17, lines 44-67 and Fig. 7 (item 90) and Fig. 32. Nothing in McGovern is programmed to be automatic, or programmed to occur “**during a specified time period, in immediate response to receipt of an electronic selection of the new open position from one of the one or more preferred workers.**” In the claimed invention, the receipt of the electronic acceptance automatically triggers the assignment of the position. This triggered computer operation is not taught or suggested by McGovern, or any of the references.

The examiner cites as motivation for one or ordinary skill in the art to combine these references in a 3-way combination, that one of ordinary skill would want to provide a “**method and apparatus to organize and screen job seekers on a computerized network, and to notify job seekers when a suitable position is available.**” **But this motivation does not suggest the claim limitations or how to create or enable a system with these claim limitations:**

the one or more computers configured for automatically assigning the new open position only to one of the one or more preferred workers during a specified time period, in immediate response to receipt of an electronic selection of the new open position from one of the one or more preferred workers and immediately removing the position as an available for selection open position;

the one or more computers configured for automatically making available for selection the new open position to one or more additional respective worker web pages associated only with one or more additional respective workers that are qualified, if one of the one or more preferred workers has not selected the new open position before expiration of the specified time period.

In other words, even if one of ordinary skill could combine these three diverse teaching (which he/she cannot), the computer operations of the elements of the claim as a whole listed above would still be missing.

Thus, claim 123 and claims dependent thereon are allowable for these reasons, and also in their own right based on the additional limitations that they add. Method claim 132 and claims dependent thereon are allowable for the similar reasons.

Reconsideration of this application is respectfully requested in view of the foregoing amendments and the following remarks.

Should additional fees be necessary in connection with the filing of this paper, or if a petition for extension of time is required for timely acceptance of same, the Commissioner is hereby authorized to charge Deposit Account No. 19-0741 for any such fees; and applicant(s) hereby petition for any needed extension of time.

Respectfully submitted,



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